

**SOLICITATION FOR PREQUALIFICATION OF
LEGAL COUNSEL FOR
DIRECT AND INDIRECT INVESTMENTS IN COMPANIES IN
THE START-UP, EARLY, SEED, AND VENTURE STAGES OF DEVELOPMENT**

BACKGROUND:

The New York State Urban Development Corporation d/b/a the Empire State Development (“ESD”) is the chief economic development agency of the State of New York (the “State”). The mission of ESD is to promote a vigorous and growing economy, encourage the creation of new job and economic opportunities, increase revenues to the State and its municipalities, and achieve stable and diversified local economies. Additional information about ESD may be found on ESD’s website at www.esd.ny.gov. ESD strives to enhance private business investment and growth to spur job creation and support prosperous communities across New York State. ESD has broad statutory powers, including the power to provide to enterprises, located in the State, financial assistance in the form of direct and indirect equity, debt, convertible, and technology commercialization investments.

PURPOSE:

The purpose of this request for proposals (“RFP”) is the prequalification of counsel to be available to represent ESD, its subsidiaries, and affiliates, from time to time, regarding transactional direct and indirect equity, debt, convertible, and technology commercialization investments in enterprises, particularly those in the start-up, seed, early, and venture stages of development. Areas of relevant experience include securities, tax, corporate (including limited liability companies and partnerships), product and intellectual property licensing, and structuring royalties.

The resulting list of prequalified firms will supplement those ESD pre-qualified counsel lists that are currently in effect for other practice areas. Accordingly, interested firms on any existing ESD counsel list should respond to this RFP, if they wish to be prequalified to represent ESD for matters related to investments in such enterprises.

Please note that designation of any firm as pre-qualified does not mean that ESD will engage the firm to provide legal services. Such engagement may occur when the need arises and ESD and such counsel enter into a contract for such engagement.

ESD strongly encourages State certified Minority-Owned Business Enterprises and Women-Owned Business Enterprises (as well as firms that are not yet certified, but that have applied for certification) to submit responses to this RFP.

SCOPE OF SERVICES:

ESD seeks proposals from large, medium, and small sized law firms with demonstrable expertise in advising and representing investors in structuring, implementing, and liquidating direct and indirect equity, debt, convertible, and technology commercialization investments in enterprises, particularly those in the start-up, seed, early, and venture stages of development. Areas of relevant experience include securities, tax, corporate (including limited liability companies and partnerships), product and intellectual property licensing, and structuring royalties. Programs for which ESD may require such services include Innovation Venture Capital Fund (a new \$50 million venture capital fund for seed, early, and venture stage investments intended to incentivize new business formation and facilitate the transition of ideas and research into marketable products), Innovate NY Fund (<http://esd.ny.gov/innovateny.html>), and Small Business Technology and Investment Fund (<http://www.esd.ny.gov/smallbusiness/sbtif.asp>).

ELIGIBILITY AND FEES:

Firms must have an office in the State and will be subject to ESD contracting requirements, including, among other things, limitations on hourly fees. Currently, the maximum rates are the lesser of the firm's actual billing rates or the following:

- \$400 per hour for partners
- \$375 per hour for senior associates (5th year and up)
- \$350 per hour for mid-level associates (3rd – 4th year)
- \$300 per hour for junior associates (passed bar exam – 2nd year)
- \$220 per hour for law clerks (law student interns; first year associates until bar exam passed)
- \$90 per hour for legal assistants

This maximum rate structure is subject to change from time to time by action of the ESD Directors; however, ESD reserves the right to negotiate a lower or different fee structure with any pre-qualified firm that ESD chooses to engage. In certain cases, where private third parties agree to reimburse ESD's legal fees, the engaged firm may be compensated at rates greater than those set forth above.

CRITERIA FOR SELECTION:

In evaluating proposals submitted pursuant to this request, ESD places high value on the following factors:

1. Relevant firm experience and the qualifications and experience of the staff proposed to be assigned to the ESD engagement. (scoring weight –50%)
2. Overall organization, completeness, and quality of the proposal, including cohesiveness, clarity of response and demonstrated understanding of ESD and the relevant programs. (scoring weight –20%)
3. Anticipated cost of services and willingness to work together with ESD, and its subsidiaries and affiliates, in order to minimize costs. (scoring weight – 20%)
4. Diversity and commitment to equal opportunity programs. (scoring weight –10%)

KEY EVENTS/DATES:

Issuance of RFP:	April 11, 2014
Deadline for RFP Questions:	April 25, 2014
Date for ESD Responses to Questions:	May 2, 2014
Proposal Due Date:	Noon, May 9, 2014
Interviews, if necessary (not earlier than):	May 2014 – June 2014
Anticipated Selection:	June 2014

ESD reserves the right to modify this schedule at its discretion. Notification of changes in connection with this RFP will be made available to all interested parties via ESD’s website at <http://esd.ny.gov/CorporateInformation/RFPs.html>.

QUESTIONS, CHANGES, AND CONTACT:

ESD will post all of its responses to substantive questions only on ESD’s website (<http://esd.ny.gov/CorporateInformation/RFPs.html>). ESD intends to post such responses on or prior to the date set forth in the KEY EVENTS/DATES section of this RFP. All questions must be submitted to ESD in writing and only by email addressed to the email address specified below for the designated contact person named below, and such questions must be so received by ESD prior to the deadline for questions set forth in the KEY EVENTS/DATES section of this RFP. ESD will post on its website the electronic version of this RFP and all changes, additions, or deletions thereto. Firms should frequently check ESD’s website regarding this RFP.

The designated contact person for this solicitation is Regina Stephens, Paralegal/Project Associate, Empire State Development, 633 Third Avenue, New York, NY 10017-8109. For all matters regarding this RFP, Ms. Stephens shall be contacted only by email and only at: CounselRFP@esd.ny.gov.

OTHER THAN THE CONTACT PERSON IDENTIFIED HEREIN, PROSPECTIVE RESPONDENTS SHALL NOT APPROACH OTHER ESD EMPLOYEES ABOUT ANY MATTERS RELATED TO THIS RFP OR ANY PROPOSALS SUBMITTED PURSUANT THERETO FROM THE TIME OF ISSUANCE OF THIS RFP THROUGH THE FINAL AWARD AND EXECUTION OF ANY RESULTING CONTRACT (THE "RESTRICTED PERIOD").

SUBMISSION REQUIREMENTS:

Proposal submissions must be received by ESD by 12 noon on or prior to the Proposal Due Date set forth in the KEY EVENTS/DATES section of this RFP. The submission should be labeled "Prequalified Counsel RFP Response" and addressed to Regina Stephens, Empire State Development, 633 Third Avenue, New York, NY 10017-8109. The submission should include five (5) copies of the information and other items required by this RFP, and one additional copy on disk (pdf format preferred). Electronic submissions will not be accepted.

Below, is the list of information and documentation required of each respondent. A proposal may be rejected if it does not include the required information and documents.

A. Tab 1: Basic Information

1. For the practice areas described in the SCOPE OF SERVICES section of this RFP, provide a description of the firm's relevant experience. Include a brief description of representative transactions and specify the firm's role for each.
2. Indicate whether services have been provided previously to ESD or any of its subsidiaries or affiliates, and, if so, identify the client entity and describe the services.
3. The names of the principal partners and other attorneys who would be responsible for ESD's matters, and a description of the relevant qualifications and experience of each attorney.
4. Evidence of public sector experience. Such experience is of interest but not required.
5. If the firm is a State certified Minority-Owned Business Enterprise ("MBE") or a Woman-Owned Business Enterprise ("WBE"), provide documentation evidencing registration. Firms that are not certified but that have applied for certification should provide evidence of filing, including the filing date.
6. A description of the instances, if any, in which the firm has worked with MBE and WBE law firms or contractors on previous transactions by engaging in joint ventures or other partnering or subcontracting arrangements. Responses should include the nature of the engagement, how such arrangement was structured, and a description of how the services and fees were allocated.

7. A statement of the firm's willingness to engage in future MBE and WBE partnering or mentoring arrangements with (i) a law firm of the respondent firm's choosing, and if so, a list of co-counsel MBE or WBE law firms with which the respondent firm is prepared to partner and/or (ii) another MBE or WBE firm selected by ESD. Such statement should include an explanation of how the firm would suggest structuring such an arrangement and allocating services and fees between the participating firms.
8. A statement that the law firm will agree to bill in accordance with ESD's maximum rates policy. For information regarding such rates, please see the ELIGIBILITY AND FEES section of this RFP.

Provide the information in the same order in which it is requested. The responses to the foregoing items must be limited to an aggregate of 12 pages, in at least 12 point font, with standard margins printed on one-sided 8 ½ X 11 inch pages, and bound and marked "Tab 1."

B. Tab 2: Background Information

Background information, such as number of attorneys in the firm, location of all offices, telephone number and e-mail addresses of the primary staff personnel who are anticipated to provide services to ESD, firm descriptions/brochures, resumes, and organizational charts, should be included in a separate "Tab 2". There is no page limit, but brevity is encouraged.

C. Tab 3: Required Forms

In a separate "Tab 3", the following should be included in the same order as listed below:

- (i) The forms listed below (and further described in PROCUREMENT REQUIREMENTS section of this RFP), which can be found in Schedule A: Conditions Applicable to the Corporation's Law Firms and Other Special Consultants (further described in the GENERAL PROVISIONS section of this RFP) should be completed, executed, and included in the submission in the same order as listed below:
 - a. Certification under State Tax Law § 5-a or Affidavit of Non-Applicability of State Tax Law § 5-a;
 - b. Forms required under SFL §§139-j and 139-k;
 - c. Offeror Disclosure of Prior Non-Responsibility Determinations; and
 - d. Form entitled "Encouraging Use of New York State Businesses in Contract Performance."

- (ii) The following representation (regarding the Iran Disinvestment Act) must be submitted on firm letterhead and signed by the respondent firm:

“By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law.”

- (iii) The Vendor Responsibility Questionnaire For-Profit Business Entity (Non-Construction) form, discussed below in the PROCUREMENT REQUIREMENTS section of this RFP, available at <http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3290s.pdf>, completed, executed, and sworn before a notary public.

PROCUREMENT REQUIREMENTS:

1. State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all respondents to this solicitation should include in their responses a properly completed Form ST-220-CA, a copy of which is accessible at the Required Forms for Vendors link at the ESD web site. (<http://esd.ny.gov/CorporateInformation/RFPs.html>). Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA may be considered incomplete and non-responsive and may not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

2. State Finance Law Sections 139-j and 139-k

State Finance Law Sections 139-j and 139-k (collectively, the “State Finance Law Requirements”) apply to this RFP. These requirements (1) govern permissible communications between potential respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for

knowing and willful violations of the provisions of these requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the State Finance Law Requirements requires that (x) all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed below; (y) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESD website under “RFPs/RFOs” <http://esd.ny.gov/CorporateInformation/RFPs.html>); and (z) periodic updating of such forms during the term of any contract resulting from this RFP.

The designated contact person for this solicitation is Regina Stephens, Paralegal/Project Associate, Empire State Development, 633 Third Avenue, New York, NY 10017-8109. For all matters regarding this solicitation, Ms. Stephens shall be contacted only by email and only at: CounselRFP@esd.ny.gov.

Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law as part of their submittal.

The State Finance Law Requirements also require ESD staff to obtain and report certain information when contacted by prospective bidders during the restricted period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

This is not a complete presentation of the provisions of the State Finance Law Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at: <http://esd.ny.gov/CorporateInformation/RFPs.html> (under “ESD Policy Regarding Permissible Contacts under SFL 139”)

All potential Respondents are solely responsible for full compliance with the State Finance Law Requirements. **Both the prime consultant and the sub-consultants complete the forms required above.**

3. Vendor Responsibility

ESD asks vendors to register in the State's Vendor Responsibility System (VendRep System). The VendRep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State procurement law

requires that state agencies award contracts only to responsible vendors. Vendors are asked to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company's trade industry.

4. Project Sunlight

Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive in-person or video-conference interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract for services as contemplated in this RFP, must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Proposers and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

5. Iran Divestment Act (referred to in item C (ii) of the SUBMISSION REQUIREMENTS section of this RFP)

As part of ESD procurement guidelines, upon submission of proposal, the prime Consultant shall comply with the Iran Divestment Act. The following language shall be submitted on company letterhead and signed by the Consultant;

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law."

6. Encouraging Use of New York State Businesses

All vendors who anticipate using sub-contractors or suppliers to fulfill procurement contracts are encouraged (but not required) to use New York State businesses. Accordingly, the prime Consultant must complete the form entitled "Encouraging Use of New York State Businesses in Contract Performance."

MINORITY-OWNED BUSINESS AND WOMEN-OWNED BUSINESS PROVISIONS:

New York State Law

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation to promote opportunities for maximum feasible participation of certified minority-owned and women-owned business enterprises, and the employment of minority group members and women in the performance of ESD contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title *The State of Minority-Owned and Women-Owned Business Enterprises* (the "Disparity Study"). The study found evidence of statistically significant disparities between (i) the level of participation of minority-owned and women-owned business enterprises in New York State contract procurement versus (ii) the number of minority-owned and women-owned business enterprises that were ready, willing and able to participate in New York State contract procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the State's Minority-Owned and Woman-Owned Business Enterprises program. The Disparity Study recommendations resulted in the enactment and the implementation of New York State Executive Law Article 15-A, that requires, among other things, that ESD establishes goals for maximum feasible participation of New York State certified Minority-Owned Business Enterprises ("MBEs") and Women-Owned Business Enterprises ("WBEs") and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for Minority-Owned and Women-Owned Business Enterprises

ESD has established an overall goal of 23% for State certified MBE and WBE participation for the legal services performed under any contract that may be awarded to firms that are pre-qualified pursuant to this RFP: 13% for MBE participation and 10% for WBE participation.

Firms (that are not MBEs and/or WBEs) responding to this RFP are strongly encouraged to consider partnering, or other joint venture arrangements, with State certified MBE and WBE law firms in order to achieve such goals and to give such MBE and WBE law firms the opportunity to participate in the legal services performed under contracts to be awarded to pre-qualified counsel by ESD. ESD also reserves the right to require firms selected as pre-qualified counsel to work as co-counsel on specific transactions or matters with other firms and to allocate work in a manner that ensures that such MBE and WBE law firms are assigned to substantive tasks and receive appropriate credit and compensation for the services they provide.

Note that, under Executive Law Article 15-A, firms that are not State certified MBEs or WBEs must document good faith efforts to provide meaningful participation by State certified MBE and WBE law firms as co-counsel in the legal services performed. Willful and/or intentional

violation of this obligation may result in the imposition of liquidated damages, including, without limitation monetary payments based on the MBE and WBE goal shortfall, and/or appropriate sanctions, including, without limitation, suspension of any future contracts with ESD and its subsidiaries.

The directory of New York State Certified MBEs and WBEs can be viewed at:

<https://ny.newnycontracts.com>

Further, the ESD Contractor and Supplier Diversity unit is available to assist respondents in identifying New York State certified MBEs and WBEs that can provide legal and other services in connection with this RFP. If you require MBE and WBE listings, please contact the Office of Contractor and Supplier Diversity unit at OCSD@ESD.NY.GOV. Such communication will not be considered a prohibited lobbying contact.

INTERVIEWS:

ESD reserves the right to determine whether interviews will be necessary. It is anticipated that, if ESD deems interviews necessary, they will be held in May and/or June 2014. The proposed lead partner, who would be responsible for ESD's relationship with the firm, as well as other key personnel proposed to provide the services, should be present and participate in the interview. The purpose of the interview is to further document the proposer's ability to provide the required services, and to impart to the committee conducting the interview an understanding of how specific services will be furnished.

GENERAL PROVISIONS:

ESD reserves the right to reject any or all proposals submitted if such election is deemed to be in the best interest of ESD. ESD assumes no obligation, no responsibility and no liability for costs incurred by the responding firms prior to the issuance of a contract.

Any contract issued to a pre-qualified firm will include, among other provisions, the provisions of Schedule A: Conditions Applicable to the Corporation's Law Firms and Other Special Consultants. The current form of Schedule A (link provided below) may be modified from time to time by ESD:

http://esd.ny.gov/CorporateInformation/Data/RFPs/03272014_SCHEDULEAforLegalFirms_Marc_h2014.pdf

Acceptance of the terms and conditions of Schedule A is a condition to the award of any contract.

EXEMPTION: None